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No. 179] NEW DELHI, MONDAY, DECEMBER 29, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 29th December 1952

S.R.O. 2126.—WHEREAS the election of Shri J. N. Wilson, as a member of the House of the People from the Mirzapur District-cum-Banaras (West) Constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shankar Tripathi son of Shri Mahadeo Tripathi, Village Dhanapur, P.O. Gopigunj, District Banaras;

AND WHEREAS, the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, ALLAHABAD

PRESENT:—Sri V. G. Oak, I.C.S.—*Chairman.*

Sri N. N. Mukerji
Sri Babu Ram Avasthi } *Members.*

ELECTION PETITION No. 246 OF 1952

Shankar Tripathi—*Petitioner.*

Versus

Returning Officer, Mirzapur and others—*O. Parties.*

JUDGMENT

This election petition relates to election for the House of the People from Mirzapur District-cum-Banaras (West) Constituency. The case of Sri Shankar Tripathi petitioner is that, he and Sri J. N. Wilson respondent No. 2 were among the candidates for this election. Respondent No. 1 was the Returning Officer. Respondent No. 2 was declared elected. But the election was vitiated on account of various corrupt and illegal practices committed by respondent No. 2 and on account of violation of election rules committed by respondent No. 1. The petitioner pleaded that counting of votes was postponed without giving any reason. Notice about re-polling was not sufficient. No notice was given to counting agents. Re-polling was illegal. Section 58(3) of Representation of People Act 1951 and rules 12 and 44 of Representation of People Rules 1951 were violated. Respondent No. 2 appealed to voters on communal lines, and thereby violated section 124(5) of the Act. There was also violation of Article 14 of the Constitution. Respondent No. 2 used an aeroplane for election purposes, and thus committed a major corrupt practice.

Certain teachers of this constituency were unable to cast their votes. The petitioner, therefore, prayed that, the election of the returned candidate be declared void, and the petitioner may be declared duly elected in place of the returned candidate. Separate written statements were filed by respondents Nos. 1 and 2. They denied the commission of illegal or corrupt practices. Violation of election rules was also denied. It was pleaded by these respondents that, the petition is vague and lacking in particulars, that verification of the petition is defective, and section 83 of R.P. Act 1951 was not complied with. Respondent No. 1 complained that he was unnecessarily impleaded in the election petition. Both these respondents claimed special costs from the petitioner. On these pleadings the following issues were framed:—

ISSUES

1. Whether the counting was postponed without giving any reason? If so, its effect?
2. Was notice of re-polling not sufficient? If so, its effect?
3. Was no notice given to counting agents? If not, its effect?
4. Was the re-polling illegal? Were provisions of section 58(3) R.P. Act 1951 not followed?
5. Was there violation of Rules 12 and 44 of R.P. Rules 1951?
6. Did respondent No. 2 appeal to voters on communal lines? Did he violate Section 124(5) of the Act?
7. Was there violation of Article 14 of the Constitution?
8. Did the use of aeroplanes by respondent No. 2 amount to a major corrupt practice?
9. Were teachers of Bhadohi Sub-Division debarred from using their votes? If so, its effect?
10. Is the petition vague, and lacking in particulars?
- 10-A. Whether verification of the petition is defective? If so, its effect?
11. Was section 83 of the Act not complied with?
12. Was respondent No. 1 unnecessarily impleaded? Is he entitled to Special costs?
13. Is respondent No. 2 entitled to special costs?
14. To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—Certain documents on the record show, and parties were agreed before us, that the original polling in this constituency took place from 22nd January 1952 to 31st January 1952. Counting was fixed for 3rd February 1952. But on that date the Returning Officer announced that, for certain reasons counting had to be postponed. There was a re-poll for certain polling stations in the constituency. Re-poll took place on 14th February 1952, and counting of votes took place on 19th February 1952. The petitioner was not represented before us by any counsel. The petitioner himself argued his case.

Section 58, R.P. Act 1951, provides for fresh poll in the case of destruction etc. of ballot boxes. On 3rd February 1952 the Returning Officer issued notice Ex. 18 postponing the counting of votes. In this notice Ex. 18 it was stated that, wrong ballot papers had been issued at certain polling stations, and that instructions had been received from the Chief Electoral Officer, U.P., to postpone the counting of votes. Sri Wilson respondent said that, the Returning Officer announced that boxes from Bhadohi had been damaged in transit; so votes would not be counted that day (3rd February 1952). Be that as it may, there is no reason to suppose that the Returning Officer postponed the counting of votes whimsically. The petitioner did not complain in his petition that, counting of votes was postponed arbitrarily. In paragraph 3 of the annexure to the petition it was merely stated that, counting was postponed without giving any reason thereto. A perusal of Ex. 18 shows that, some reasons were given. The petitioner has failed to prove that, the counting was postponed without giving any reason. This issue is decided against the petitioner.

Sub-section (2) of section 58, R.P. Act 1951 lays down that, whenever the polling at a polling station becomes void under sub-section (1), the Returning Officer shall report the matter to the appropriate authority and to the Election Commission. The petitioner contended that, 'the appropriate authority' means the candidates. The expression 'appropriate authority' has been defined in clause (b) of section 2

of the Act. 'Appropriate authority' means the Central Government or the State Government, as the case may be. Under sub-section (2) of section 58 of the Act, the Returning Officer was not required to explain to the candidates his reasons for postponing the counting of votes.

Sub-section (3) of section 58 deals with notification about the re-poll. "The Returning Officer shall notify the day so appointed and the hours of polling so fixed by him in such manner as the Election Commission may direct." The petitioner urged that the notice about re-poll should have been published in the gazette. The respondents conceded that, no notice about re-poll was published in the gazette. Sub-section (3) of section 58 does not lay down that, such notice shall be published in the gazette. The re-poll has to be notified as directed by the Election Commission. In the first place the point about want of publication of the said notice in the gazette was not raised in the election petition. Secondly, it has not been shown that, the Election Commission had directed the Returning Officer to publish the notice in the gazette. We, therefore, take it that, there was no violation of sub-sections (2) or (3) of Section 58 of the Act.

Issue No. 2.—Rules 12 of R.P. Rules 1951, lays down that, a candidate may at least three days before the commencement of the poll appoint one agent and two relief agents to act as polling agents. The petitioner complains that, he did not get three days' notice about the re-poll, as prescribed by Rule 12. Ex. 17 is an order passed by the Returning Officer at the foot of a complaint dated 19th February 1952. The Returning Officer wrote in Ex. 17 that, orders of the Election Commission were received on 11th February 1952, and notices to all candidates were immediately issued the same day. We may accept the statement of facts contained in Ex. 17. Notices about the repoll were issued to candidates on 11th February 1952. Re-poll took place on the 14th. If the petitioner received the notice on the 11th, he got the requisite notice of three days. But the petitioner's contention is that, he received the notice on the 12th, and not on the 11th. In paragraph nine of the annexure to the petition it was stated that, notice was served on the 12th. But allegations in the annexure cannot be treated as evidence in the case. The petitioner in his deposition said nothing on this point. There is thus no evidence before us for proving the date of receipt of the notice. Under section 114, Indian Evidence Act, there is a presumption that, all official acts were regularly done. It was for the petitioner to prove the alleged irregularity. For want of necessary evidence, we decide this issue against the petitioner.

Issue No. 3.—In paragraph 10 of the annexure it was stated that, the petitioner received on 17th February 1952 notice about the counting of votes on 19th February 1952. The petitioner cannot, therefore, now complain that, he did not get notice about the counting of votes on 19th February 1952. When the petitioner was examined under Order X, C.P.C., he stated that he appointed Sri Shankar Upadhyaya on 18th February 1952 as a counting agent, and that counting agent was present at the counting on 19th February 1952. We may, therefore, assume that, notice was given to counting agents. The issue is decided against the petitioner.

The petitioner argued that, the Assistant Returning Officer at Banaras was not competent to count votes at Banaras. Section 22 R.P. Act, 1951, deals with Assistant Returning Officers. The proviso to sub-section (2) of section 22 lays down that, no Assistant Returning Officer shall perform any of the functions of the Returning Officer relating to the counting of votes unless the Returning Officer is unavoidably prevented from performing the duty. This point was not raised in the election petition. Had this point been raised in the petition, the respondents might have led evidence to explain the reasons for counting of votes at Banaras by the Assistant Returning Officer. The petitioner cannot be allowed to raise this point for the first time in arguments. The Returning Officer himself was present at Mirzapur. He could not be present both at Mirzapur and Banaras.

Issue No. 4.—We have already referred to the notice Ex. 18 relating to re-poll. We have no reason to suppose that, re-polling was ordered arbitrarily. Sri Wilson respondent said that boxes from Bhadohi were damaged in transit. The petitioner complained that the damaged boxes were not shown to the petitioner. It is not laid down in section 58 of the Act that, the damaged boxes should be shown to candidates. We have already shown that, the petitioner has failed to prove that, it was necessary to publish in the Gazette the notice about repoll. We hold that re-polling was not illegal, and that there was no violation of section 58(3) R.P. Act 1951.

Issue No. 5.—Rule 12, R.P. Rules, 1951, deals with appointment of polling agents. We have already shown that, the petitioner has failed to prove that, he did not get three days' notice contemplated by Rule 12. Rule 44 deals with appointment of time, place and date for the counting of votes. By his notice Ex. 15, dated 20th

January 1952 the Returning Officer announced that, counting of votes would start from 3rd February 1952. The original polling took place from 22nd January 1952 to 31st January 1952. The notice Ex. 15 was issued before the close of the original poll. The petitioner argued that, the Returning Officer violated sub-rule (1) of Rule 44. Rule 44(1) states that "where a poll is taken, the Returning Officer shall appoint a date (which shall be as soon as practicable after the completion of the poll throughout the constituency) for the counting of votes". The petitioner's contention is that, the Returning Officer cannot issue a notice about counting of votes till the poll is complete. This argument is not sound. The expression within the brackets governs the word 'date'. The rule simply means that, the counting of votes has to be done after the completion of the whole poll. There can be no objection if the notice is issued before the completion of the poll fixing a date for counting of votes after the completion of the poll.

Sub-rule (2) of Rule 44 lays down that, the Returning Officer shall give notice of such date, time and place in writing to all candidates and their counting agents. It was noted in Ex. 15 that, copies of the notice were to be issued to candidates for information. We take it that copies of the notice were issued as indicated in Ex. 15.

Sub-rule (3) of Rule 44 deals with postponing the counting of votes. We have already dealt with this matter under previous issues. We do not find any irregularity in postponing the counting of votes. We hold that there was no violation of Rules 12 and 44, R.P. Rules 1951.

Issue No. 6.—Shiva Karan Misra (P.W. 3) said that Wilson's agents were saying that Wilson alone was standing in the whole State. So votes should be given to him but not to others. Such canvassing did not involve any communalism. Nadir (P.W. 4) stated that congressmen were saying that, votes should be given to Wilson as the Congress is in power. Further, Muslims would be turned out, and they would have to go to Pakistan if they did not vote for Wilson. The alleged canvassing was to the effect that, Muslims in their own interest should vote for the Congress. This canvassing also did not involve communalism. The petitioner deposed that Wilson admitted to the petitioner that the respondent had asked two Muslim leaders not to vote for Jan Sangh or for Socialists but to vote for the Congress. It is legitimate for a candidate to request voters to vote for one party and not to vote for another party. This preaching also did not involve appeal to voters on communal lines. We hold that the petitioner has failed to prove that, respondent No. 2 appealed to voters on communal lines, or that respondent No. 2 violated section 124(5) of the Act.

Issue No. 7.—The petitioner appears to have strange notions about Article 14 of the Constitution. He referred to all sorts of things as violations of his fundamental rights. Article 14 of the Constitution recognizes equality of all persons before law. The Article has nothing to do with irregularities of procedure. The petitioner suggested that authorities showed partiality towards respondent No. 2. This charge has not been substantiated. Respondent No. 2 engaged an aeroplane for distributing pamphlets to voters. Sri Wilson admitted that he took the District Magistrate's permission for engaging the aeroplane from Hind Flying Club, Allahabad, and that the respondent took the District Magistrate's permission for dropping such leaflets from the aeroplane. It has not been shown that, by granting such permission the District Magistrate was partial to respondent No. 2. It has not been shown that, the District Magistrate denied similar facilities to the petitioner. We do not find any violation of Article 14 of the Constitution.

Issue No. 8.—The petitioner laid great emphasis on the use of the aeroplane by respondent No. 2 for dropping leaflets. The respondent admitted the use of the aeroplane for dropping leaflets. The question for consideration is whether this act of respondent amounted to a corrupt practice.

The petitioner relied upon sub-sections (6) and (8) of section 123 R.P. Act 1951. Sub-section (6) of Section 123 deals with the hiring of any vehicle by a candidate for the conveyance of electors. The expression 'vehicle' has been defined in sub-section (6). By this definition the term 'vehicle' means a vehicle used for road transport. An aeroplane is not a vehicle used for road transport. Again, the prohibition contained in sub-section (6) is only against conveyance of electors. There is no prohibition against distribution of leaflets. For these reasons sub-section (6) of section 123 has no application to the present case.

It was urged by the petitioner that, by giving permission for the use of the aeroplane the District Magistrate assisted respondent No. 2. We do not think so.

The prohibition contained in sub-section (8) of section 123 is against assistance for the furtherance of the prospects of a candidate's election. To give reasonable facilities to candidates to carry out their election campaign does not amount to assistance for the furtherance of the prospects of a particular candidate. It is just possible that, the petitioner might have received the same facilities for the use of an aeroplane, had he cared to engage an aeroplane.

Respondent No. 2 admitted having dropped leaflets similar to the leaflet Ex. 1. We find two pictures on the leaflet Ex. 1. The picture at the top depicts Pt. Jawahar Lal Nehru casting his vote for the Congress in a box with the symbol of two bullocks. At the bottom is another picture showing a number of voters near a similar box. There is a direction against the second picture advising electors to cast their votes for the Congress in the box with the symbol of bullocks. The petitioner argued that, the leaflet involved violation of secrecy of voting. We do not think so. The petitioner did not suggest that, Pt. Jawahar Lal Nehru was an elector in this particular constituency. The object of the leaflet was not to tell voters how Pt. Nehru utilized his individual vote. The reference was obviously to Pt. Nehru's appeal to voters to vote for the Congress. To appeal to voters to vote for Congress did not involve violation of the secrecy of voting. We hold that the use of the aeroplane by respondent No. 2 did not amount to a corrupt practice.

Issue No. 9.—Dudh Nath Misra (P.W. 5) complained that no teacher could cast his vote, as teachers did not get postal ballot papers. The witness said that he sent an application to the Sub-Divisional Officer through the Secretary of the Teachers' Board. The Secretary did not appear before the Tribunal. So we do not know whether the applications for ballot paper actually reached the Officer. It may be that some teachers were unable to cast their votes through postal ballot papers as stated by P.W. 5. But it has not been shown that, the election machinery was at fault. The petitioner has failed to prove that, teachers of Bhadohi Sub-Division were debarred from using their votes.

Issue No. 10.—Section 83(i) R.P. Act 1951, lays down that, an election petition shall contain a concise statement of the material facts on which the petitioner relies. The present petition does not satisfy this test. In paragraph 5 of the petition it was stated: "Illegal practices, major corrupt practices and minor corrupt practices may be treated jointly as an act having been committed in order to get Congress candidate elected in utter disregardance of the rules of the People Representation Act, 1951." This paragraph does not give any idea as to what the illegal and corrupt practices were. The annexure attached to the petition is confusing in many ways. We are of opinion that, the petition is vague and lacking in particulars.

Issue No. 10-A.—Under section 83 of the Act the petition and the list of particulars have to be verified as laid down in the Code of Civil Procedure. Under the Code of Civil Procedure the place of verification has to be specified. The petitioner did not specify the place of verification of the petition and the list of particulars. This cannot be said to be a serious defect. We hold that verification of the petition is slightly defective, but this defect does not affect the hearing of the petition on merits.

Issue No. 11.—We have already shown that, provisions of section 83 of the Act were not properly complied with. The issue is decided in favour of respondents.

Issue No. 12.—The reliefs claimed by the petitioner are that, the election of respondent No. 2 should be set aside, and the petitioner should be declared as elected. No relief was claimed against respondent No. 1. The petitioner stated before us that, he did not claim costs against respondent No. 1. Section 82 of the Act deals with parties to the petition. "A petitioner shall join as respondents to his petition all the candidates....." Section 82 does not contemplate the impleading of the Returning Officer as a respondent. It may be that, the petitioner is unable to maintain an action before the civil court against the Returning Officer. But it does not follow that, the Returning Officer is a necessary or even a proper party before this Tribunal.

Section 99 of the Act empowers the Tribunal to fix the costs payable by parties. There is no provision in the Act similar to section 35A, Code of Civil Procedure. We are not, therefore, sure whether this Tribunal has the power to award special costs. It appears that the petitioner honestly believed that, the Returning Officer was a necessary or a proper party, as the petition contained certain allegations against the Returning Officer. We hold that, respondent No. 1 was unnecessarily pleaded in the election petition. But he is not entitled to special costs.

Issue No. 13.—The petitioner appears to have filed this petition in good faith. No malice has been proved. We decide that, respondent No. 2 also is not entitled to special costs.

Issue No. 14.—Since the petitioner has failed on the main issues, he cannot get any relief. It may be mentioned that, Sri Wilson got 1,21,994 votes as against 21,883 votes received by the petitioner. There was a difference of one lac of votes. The petitioner told us that, the re-poll involved twenty polling booths and 20,000 voters. Further, some 500 teachers were unable to cast their votes. Even if we assume that all these votes went in favour of respondent, and even if we transfer all these votes from respondent No. 2 to the petitioner, respondent No. 2 would still get majority of votes. We hold that the petitioner is not entitled to any relief.

Since the petition has failed, the petitioner must pay costs of the contesting respondents. We assess the costs of respondent No. 1 at Rs. 250, and the costs of respondent No. 2 at Rs. 500.

We may mention that, although certain corrupt practices were alleged by the petitioner, no corrupt or illegal practice has been proved against respondent No. 2.

ORDER

We dismiss the election petition with costs to the contesting respondents. The petitioner shall pay Rs. 250 to respondent No. 1 as his costs, and Rs. 500 to respondent No. 2 as his costs. Out of the petitioner's security of Rs. 1,000, the balance of Rs. 250 shall be refunded to him.

(Sd.) V. G. OAK, I.C.S., *Chairman*.
22-12-52.

(Sd.) N. N. MUKERJI, *Member*.
22-12-52.

(Sd.) BABU RAM AVASTHI, *Member*.
22-12-52.

[No. 19/246/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.